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Written statement* submitted by the Public Organization "Public Advocacy", a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[09 August 2018]

* Issued as received, in the language(s) of submission only.

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On Violations of the Rights of Orthodox Christians in Montenegro

Historical Aspect

The establishment of the church organization on the territory of today's Montenegro started already in the first centuries of the Christianity. It is linked to the Saint Sava, the first Serbian Archbishop, and to the year of 1220, when he founded the Eparchy of Zeta in§ this area (today's Metropolitanate of Montenegro and the Littoral) and the Eparchy of Buda (today's Eparchy of Buda and Nikšié).

Social Aspect

There are three traditional religions in Montenegro: Orthodox, Roman Catholic and Muslim religion. As of recently, there is a slight number of members of Jewish and Protestant religions. In accordance with the population census from the year of 2011, there are 72,07 % Orthodox Christians. In spiritual sense, the Orthodox Christians belong to the Metropolitanate of Montenegro and the Littoral and to the Eparchy of Buda and Nikšié, the Eparchy of Zahumlje and Herzegovina and the Eparchy of Mileševa, which are in liturgical and canonical unity with the Serbian Orthodox Church — the Patriarchate in Belgrade.

Legal Aspect

In the year of 2007, Montenegro adopted a new Constitution, which in the Article 14 regulates the separation of the religious communities from the state and stipulates that they are equal and free in performing religious rites and religious affairs. Article 46 of the Constitution regulates the right to the freedom of religion, in the manner which is not completely aligned with the Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Unfortunately, Montenegro is one of the former Yugoslav Republics, where the Law on Legal Status of Religious Communities as of 1977, from the Communist period, is still in force and it is anachronistic.

The Metropolitanate of Montenegro and the Littoral and other eparchies of the Serbian Orthodox Church have been publicly asking for years for the commencement of passing a new Law on Legal Status of Churches and Religious Communities, which would, on the one hand, in the spirit of history and legal-historical tradition of Montenegro and, on the other hand, in the spirit of the mandatory international norms regarding the freedom of religion and social reality, regulate the issue of the realization and efficient protection of the right to the freedom of religion in its individual and collective aspects.

Instead of this, the Government of Montenegro chose to regulate, by means of agreements, in a selective and discriminatory manner, primarily in relation to the Orthodox Church, the relations with the selectively chosen religious communities. Firstly, the Fundamental Agreement between the Holy See and Montenegro was concluded in 2011, which was followed by the Agreement Regulating Mutual Relations between the Government of Montenegro and Islamic Community and Agreement Regulating Mutual Relations between the Government of Montenegro and Jewish Community in 2012.

The stated Agreements are not only different, but also mutually opposed (for example, the public-legal subjectivity has been acknowledged to the Roman Catholic Church, while the civic legal subjectivity has been acknowledged to the Islamic Community and to the Jewish community). The constitutional norm about the equality of the religious communities was violated twice.

The Orthodox Church requested on several occasions that its legal position be regulated by means of an agreement, as well. Unfortunately, this did not take place due to the political, not legal reasons, since the Ministry of Human and Minority Rights tried to condition the conclusion of the agreement with its influence on the internal church organization and autonomous canonical right of the Church.

Problems

In the year of 2000, persons that do not have any kind of canonical legitimacy, along with acting of the security and political structures, established a new religious community under the title "Montenegrin Orthodox Church" in Montenegro. Miraš Dedeié, the former priest of the Ecumenical Patriarchate of Constantinople in Rome, who was excommunicated from the Church due to the proven canonical violations by the Patriarch, Mr. Vartolomej, is its Head. The new community is not recognized by any of the Orthodox Churches in the world.

Such a new religious community acquired its legal status by means of a classic abuse of the Article 2 of the Law on Legal Status of Religious Communities. Having in mind the collective aspect of the right to the freedom of religion, the

establishment of a new religious community in itself would not be problematic. However, acting of such a new community is not only targeted against the Orthodox Church in Montenegro in a verbal sense, but it is Often the case that physical attacks, aggression and violence are used in the attempt to try and perform the seizure (taking away) of the Orthodox temples and monasteries from the Metropolitanate of Montenegro and the Littoral, which represent the church property on the basis of the public documents of Montenegro. Not only do the public authorities not sanction such a criminal behavior, but they also allocate, from the state budget, to such a community, without clear criteria, the highest amounts of financial resources and, in this manner, it appears to be, in spite of the criminal activities, "the Government's new religious community".

In the middle of the year of 2015, the Government prepared the Draft Law on Freedom of Religion, and referred it to the public discussion in the period of annual leaves. The representatives of the churches and religious communities did not have their representatives in the Working group that prepared the Draft Law, which represented a serious violation of the obligatory regulations. Only the Government's officials were represented in the Working group.

The Draft Law caused a considerable disapproval by the public. Legal experts assessed it as retrograde, as compared with the Communist Law from 1977 and as non-aligned with the European Convention. The right to the freedom of religion was significantly reduced in both individual and collective aspects. It was a severe attack from the positions of the state authorities on the internal autonomy and internal organizational establishment of the churches and religious communities, and the Article 52 of the Draft Law is particularly problematic, since it stipulates a new nationalization, i.e. seizure, in favour of the state, of all sacral facilities that were constructed by believers until the year of 1918.

The Draft Law was opposed, through their objections, by the Orthodox Church, Roman Catholic Church and Islamic Community, along with the significant part of the professional public. The representatives of the Church had a meeting with the representatives of the Venice Commission and OSCE/ODIHR at which they submitted their objections in English language to them. In the end, in March 2016, the Government withdrew the Draft Law on Freedom of Religion from the procedure before the Venice Commission. Even after that, the violation of the prescribed procedure was continued, given that this issue has been on stand-by for almost three years.

Apart from the jeopardization of the identity, dignity; mission and property of the Orthodox Church in Montenegro by the members of the newly formed organization "Montenegrin Orthodox Church", a particular problem is also reflected in the fact that the state authorities have still not facilitated holding of religious instruction (teaching classes) in the public and private schools, which represents the breach of the rights of children to religious education, guaranteed by the international legal acts on human rights. Also, there is a discriminatory acting in terms of preventing the return or compensation of the sacral property to the Orthodox Church, Roman Catholic Church and Islamic Community, which was taken away from them by the Communist State. Churches and religious communities have almost no kind of treatment in the public broadcasting service — the Radio and Television Montenegro. The status of priests and religious officers is not adequately regulated, and the Ministry of Interior has been enabling, for years already, the issuance of a temporary residence permit to the priests and monks of the Orthodox Church, Who do not have the Montenegrin citizenship.

Conclusion

We consider it necessary that the public authorities of Montenegro comprehend that the right to the freedom of religion is one of the fundamental human rights and that believers cannot be second-class citizens because of their religious convictions. Due to this reason, a radical change of the public authorities' attitude towards this issue is necessary.

In institutional terms, the public authorities must protect the legal order and rights for all, including the Orthodox Church. Each attack on the churches and safety of believers must be sanctioned in accordance with the legal regulations, instead of being tolerated, as it has been the case so far. The rule of law must apply also in cases when attacks on the Orthodox Church are perpetrated.

We urge the UN Human Rights Council to pay careful attention to the above evidence of human rights violations and take effective action for their protection.